

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
WESTERN DIVISION

UNITED STATES OF AMERICA

Case No. CV 09-7565 CAS  
CR 99-1363(A)

Plaintiff-Respondent,

vs.

GEORGE MICHAEL RUELAS

PETITIONER'S MOTION TO VACATE,  
SET ASIDE OR CORRECT SENTENCE  
PURSUANT TO 28 U.S.C. § 2255

Defendant-Petitioner.

**I. INTRODUCTION**

Petitioner George Michael Ruelas is a former California Highway Patrolman ("CHP") who was convicted of conspiring with other law enforcement officers pursuant to 21 U.S.C. §§ 846, 841(a)(1) (conspiracy to possess with intent to distribute cocaine) and 21 U.S.C. § 841(a)(1) (possession with intent to distribute cocaine). The conspiracy included a July 4, 1997 theft of 295 kilograms of cocaine from the California Bureau of Narcotics Enforcement's ("BNE") Riverside evidence vault.

On November 21, 2002, petitioner was sentenced to 360-months in prison. On

1 the same day, petitioner appealed. The Ninth Circuit affirmed on May 5, 2004.

2 On petition for Writ of Certiorari, filed on August 4, 2004, the United States  
3 Supreme Court remanded the case for resentencing in light of United States v. Booker,  
4 543 U.S. 220 (2005). Upon remand from the Supreme Court, the Ninth Circuit affirmed  
5 in part and remanded in part for consideration in light of United States v. Ameline, 409  
6 F.3d 1073, 1084-86 (9th Cir. 2005) (en banc). See United States v. Ruelas, 412 F.3d  
7 1051; 286 Fed. Appx. 528. On October 17, 2006, petitioner was re-sentenced to 228-  
8 months in prison.

9 On October 27, 2006, petitioner again appealed to the Ninth Circuit and the  
10 appeal was denied on July 22, 2008. On August 7, 2008, the Ninth Circuit affirmed the  
11 sentencing imposed upon remand and otherwise denied petitioner's appeal. On October  
12 13, 2008, petitioner's petition for Writ of Certiorari to the United States Supreme Court  
13 was denied.

14 On October 16, 2009, petition filed the instant motion for relief from his sentence  
15 pursuant to 28 U.S.C. § 2255.

16 Petitioner moves to set aside, vacate or correct his sentence on the grounds that:  
17 (1) his conviction was obtained through the government's failure to disclose  
18 exculpatory material evidence proving the specific kilograms of cocaine possessed by  
19 petitioner and trafficked by co-conspirators; (2) his conviction was obtained through the  
20 government's knowing use of false evidence and/or by allowing false evidence to go  
21 uncorrected at trial in violation of the due process clause of the Fifth Amendment; (3)  
22 his conviction was obtained through the misleading admission of falsely portrayed and  
23 unauthenticated evidence; (4) his conviction was obtained by the use of purported  
24 statements obtained by the government in violation of established rules; (5) his  
25 conviction was facilitated through the use of evidence obtained in violation of the  
26 Fourth Amendment; (6) petitioner was denied effective assistance of counsel; (7) the  
27 cumulative effect of these violations resulted in a fundamentally flawed and structurally  
28 unfair trial proceeding in violation of petitioner's Fifth Amendment right to due

1 process; and (8) petitioner's sentence for supervisory release on the condition of one  
2 drug test within fifteen days of release and at least two tests thereafter is improper and  
3 without a rational basis.

4 On January 25, 2010, the government filed its opposition. On July 6, 2010,  
5 petitioner filed a reply on July 6, 2010. After carefully considering the arguments set  
6 forth by both parties, the Court finds and concludes as follows.

## 7 **II. BACKGROUND**

8 In or around 1990, petitioner, petitioner's half-brother Richard Wayne Parker  
9 ("Parker"), a BNE agent, and James Tracy Strickler, a Pima County Sheriff's Deputy,  
10 conspired to use police intelligence to steal narcotics and cash. Opp'n 2:11-16. In  
11 1992, petitioner recruited fellow CHP officer Michael Wilcox ("Wilcox") into the  
12 conspiracy. From 1992 to 1993, the conspirators posed as uniformed law enforcement  
13 officers and knocked on the doors of suspected drug houses. Reporter's Transcript  
14 ("RT") 5/1/02: 52-53, 60-72. The conspirators stole drugs found on the premises and  
15 split the profits of sale. RT 5/1/02: 52-53.

16 On July 4, 1997, petitioner and Wilcox stole 295 kilograms of cocaine from the  
17 BNE evidence vault. Parker and Wilcox were responsible for storing and distributing  
18 the cocaine.

19 In or around 1998, Parker was arrested. Opp'n 2:25-26. In 1999, he was  
20 convicted of narcotics offenses and sentenced to a term of life in prison. Opp'n 2:26-27.

21  
22 In or about November 1999, Wilcox was arrested. Wilcox agreed to become a  
23 government informant. RT 4/30/02: 9-11, 75-76. As part of his cooperation, Wilcox  
24 secretly recorded his conversations with petitioner. RT 4/30/02: 76-79. During a  
25 recorded conversation in November 1999, Wilcox told petitioner that law enforcement  
26 authorities were contacting him and suggesting that Parker had cooperated with the  
27 government to implicate Wilcox. RT 4/30/02: 79-81, 85-89. Petitioner denied that  
28 Parker was cooperating with the government and stated that if Parker implicated

1 Wilcox, Parker would have also implicated petitioner. RT 4/30/02: 85, 87.

2 During the same recorded conversation, Wilcox and petitioner discussed  
 3 petitioner's share of the narcotics proceeds and petitioner admitted that he had a role in  
 4 storing the cocaine. RT 4/30/02: 89, Ex. 150A. Petitioner further discussed that they  
 5 should "pop Orange [BNE]" the way they "[did] Riverside." RT 4/30/02: 96, Ex. 150A.

6 **III. LEGAL STANDARD**

7 A petition pursuant to 28 U.S.C. § 2255 challenges a federal conviction and/or  
 8 sentence to confinement where a prisoner claims "that the sentence was imposed in  
 9 violation of the Constitution or laws of the United States, or that the court was without  
 10 jurisdiction to impose such sentence, or that the sentence was in excess of the maximum  
 11 authorized by law, or is otherwise subject to collateral attack." Sanders v. United  
 12 States, 373 U.S. 1, 2 (1963).

13 **III. DISCUSSION**

14 Claims that have not previously been raised are generally procedurally barred and  
 15 cannot be raised for the first time in a § 2255 motion. United States v. Frady, 456 U.S.  
 16 156, 167 (1982). However, claims for ineffective assistance of counsel are not subject  
 17 to procedural default. Massaro v. United States, 538 U.S. 500, 504 (2003) (holding that  
 18 "an ineffective-assistance-of-counsel claim may be brought in a collateral proceeding  
 19 under § 2255, whether or not the petitioner could have raised the claim on direct  
 20 appeal").

21 Here, petitioner's § 2255 motion is comprised of eight claims that were not raised  
 22 on appeal. Accordingly, petitioner is barred from raising the first through fifth and  
 23 seventh and eighth claims for relief. Because petitioner's sixth claim for ineffective  
 24 assistance of counsel is not subject to procedural default under Massaro, petitioner's  
 25 sixth claim is not barred. Massaro, 538 U.S. at 504.

26 Ineffective assistance of counsel constitutes a violation of the Sixth Amendment  
 27 right to counsel, and thus, if established, is grounds for relief under § 2255. To establish  
 28 ineffective assistance of counsel, a petitioner must prove by a preponderance of the

1 evidence: (1) the assistance provided by counsel fell below an objective standard of  
 2 reasonableness; and (2) there is a reasonable probability that, but for counsel's errors,  
 3 the result of the proceeding would have been different. Strickland v. Washington, 466  
 4 U.S. 668, 688, 694 (1984). A claim of ineffective assistance of counsel fails if either  
 5 prong of the test is not satisfied and petitioner has the burden of establishing both  
 6 prongs. Id. at 697; United States v. Quintero-Barraza, 78 F.3d 1344, 1348 (9th Cir.  
 7 1995).

8 With respect to the first prong, the court's review of the reasonableness of  
 9 counsel's performance is "highly deferential," and there is a "strong presumption" that  
 10 counsel exercised reasonable professional judgment. Id. The petitioner must "surmount  
 11 the presumption that, under the circumstances, the challenged action might be  
 12 considered sound trial strategy." Id.

13 After establishing an error by counsel and thus satisfying the first prong, a  
 14 petitioner must satisfy the second prong by demonstrating that his counsel's error  
 15 rendered the result unreliable or the trial fundamentally unfair. Lockhart v. Fretwell,  
 16 506 U.S. 364, 372 (1993). A petitioner must show that there is a reasonable probability  
 17 that, but for his counsel's error, the result of the proceeding would have been different.  
 18 Strickland, 466 U.S. at 694. A "reasonable probability" is a probability sufficient to  
 19 undermine confidence in the outcome. Id.

20 The Court need not necessarily determine whether petitioner has satisfied the first  
 21 prong before considering the second. The Supreme Court has held that "[i]f it is easier  
 22 to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that  
 23 course should be followed." Id. at 670. Indeed, a petitioner's failure to allege the kind  
 24 of prejudice necessary to satisfy the second prong is sufficient by itself to justify a denial  
 25 of a petitioner's § 2255 motion without hearing. Hill v. Lockhart, 474 U.S. 52, 60  
 26 (1985).

27 Petitioner claims that his trial counsel provided ineffective assistance by (1)  
 28 failing to investigate the "required government disclosure of chain of custody

1 documents" showing that the 607 kilograms of cocaine seized by the Anaheim Police  
2 Department ("APD") in 1994, were never transferred to the Riverside BNE, and  
3 subsequently stolen by petitioner; (2) failing to "consult or present experts" to testify as  
4 to whether the cocaine evidence "match[ed]" the cocaine in the BNE vault; (3) failing to  
5 "conduct actual physical inspection of, require custody for, and challenge the  
6 authenticity of" the government's tape recordings of petitioner and his co-conspirator at a  
7 Marie Calendars in 1999; and (4) failing to investigate and argue the claim for violation  
8 of petitioner's Fourth Amendment rights against unreasonable search and seizure. Mot.  
9 at 5c.

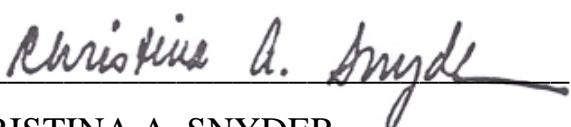
10 The Court concludes that petitioner fails to demonstrate prejudice from any  
11 alleged shortcoming of his trial counsel. Petitioner fails to show a reasonable probability  
12 that, but for alleged errors by his counsel, the result of the proceeding would have been  
13 different, given the overwhelming evidence linking petitioner to the 295 kilograms of  
14 cocaine stolen from the BNE vault. See Strickland, 466 U.S. at 694 (holding that  
15 ineffective assistance of counsel requires a showing of prejudice, which "is a reasonable  
16 probability that, but for counsel's unprofessional errors, the result of the proceeding  
17 would have been different"). Accordingly, the Court denies petitioner's ineffective  
18 assistance claim.

19 Petitioner has not requested an evidentiary hearing. Based on the factual record  
20 and for the reasons stated above, the Court finds that such a hearing is unnecessary.

21 **V. CONCLUSION**

22 In light of the foregoing, the Court hereby DENIES petitioner's motion for habeas  
23 corpus relief.

24  
25 Dated: October 12, 2010

  
26 CHRISTINA A. SNYDER  
27 UNITED STATES DISTRICT JUDGE  
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